

MERCED SUPERIOR COURT LOCAL COURT RULES

RULE 16: CRIMINAL RULES

a. Criminal Calendar

All criminal matters shall be heard per the court's published calendar. (See court's website www.mercedcourt.org or contact Court Administrator's Office).

The Judge or Commissioner whose name appears on the calendar is the Judge assigned to the calendar for purposes of Code of Civil Procedure Section 170.6(a)(2).

(Amended January 1, 2010)

b. Writ of Habeas Corpus

The Clerk shall not file any petition for writ of habeas corpus that is not accompanied by a complete copy including any exhibits, attachments or other materials sent with the original. All the papers shall be returned to the petitioner with the admonition to comply with this rule if the petition is resubmitted.

c. Request For Search and Arrest Warrants

During court hours all requests for search warrants or arrest warrants may be submitted to any available judge.

d. Discovery

All parties shall comply with Penal Code Sections 1054-1054.9.

e. Stipulated Discovery Order

All parties shall comply with the Stipulated Order re Discovery in Felony Cases filed April 12, 2000 (posted in Clerk's Office) unless an exception is requested at formal arraignment. ~~(See court's website to view document).~~ (See Appendix "I").

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**f. Minute Orders (Cases Where Minute Orders Prepared by the Clerk
Immediately After Case is Concluded and Delivered in Court)**

(1). Immediately upon the conclusion of every felony case scheduled for an arraignment, bail review hearing, pre-preliminary hearing or preliminary hearing, or trial, the Courtroom Clerk shall cause a copy of the minute order or probation order to be hand-delivered to the deputy public defender or defense attorney and the deputy district attorney who are present and appearing as attorney of record.

(2). Prior to delivering copies of the minute order as set forth above, the Judge and Clerk shall make sure the information on the minute order is correct.

(3). The deputy district attorney, deputy public defender or defense attorney shall, before leaving the courtroom, determine if the following information in the order is correct:

- (a). Date and time of next court appearance; if any.
- (b). Purpose of next court appearance.
- (c). Own Recognizance Release status.
- (d). Custody and bail amount.
- (e). The terms of probation, if applicable.

(4). If an attorney determines that any of the information in #3 is not correct, the attorney shall immediately advise the judge and clerk.

(5). If the judge agrees that any of the information in #3 is not correct, the judge and clerk shall immediately correct the minute order.

(6). This procedure shall also apply to any misdemeanor offense which involves violence or a threat of violence where attorneys of record are present.

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g. ~~Tape Recordings~~

~~No audio tape recording shall be marked for identification, admitted as an exhibit, or played before the Judge or jury unless the proponent thereof first provides the Court and opposing counsel with a written transcript of the tape recording. (Repealed Eff. January 1, 2009, See Rule 16:n).~~

h. Jury Instructions

Counsel shall file, before 4:00 p.m., on the first day of trial, a list of CAL CRIM (latest edition) instructions requested. If any proposed additional instructions are requested they shall be submitted in writing with authorities placed at the top of the writing. Proposed pattern jury instructions which have been modified by a party, shall clearly indicate any proposed change.

i. Felony Bail Schedule

The Judges shall adopt a Felony Bail Schedule for use by the Court and Merced County law enforcement agencies.

j. Notice of Motion

The notice of motion designating a motion pursuant to Penal Code Section 1538.5 shall specifically describe and list the evidence which is the subject of the motion to suppress; and shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence; and cite the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of the evidence is urged.

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k. Filing of Motions

(1). Unless otherwise ordered by the court, motions in felony cases shall be filed in writing no later than five (5) court days before the hearing, with proof of service on all parties.

(2). Unless otherwise ordered by the court, motions in misdemeanor cases shall be filed in writing no later than ten (10) court days before the hearing .

(3). Motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof and a memorandum of points and authorities.

(4). Responsive pleadings and points and authorities in opposition to either category of motion shall be filed no later than two (2) court days prior to the hearing with proof of service on all parties.

(5). Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred into the pleadings or papers by tab identification.

l. Defendant's Clothing

The attorney representing a defendant in the custody of the Sheriff in a criminal matter shall make timely and appropriate arrangements to ensure that the defendant is suitably dressed for trial before the case is assigned to a trial department.

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m. Motions Made for Release on Own Recognizance or Bail Modification

(1). When a motion for release on own recognizance or bail modification has been made to the court, and granted in whole or in part, or granted conditionally or with limiting terms, and a subsequent motion is made by the same party in the same case for a similar order upon materially changed circumstances, the subsequent motion shall be accompanied by a disclosure that:

- (a). A prior motion has been made,
- (b). When and to what judge it was made,
- (c). What the nature of the motion was,
- (d). What order or decision was made thereon, and
- (e). What materially changed circumstances are claimed to be shown.

(2). Any order made on subsequent applications failing to comply with these requirements may be vacated or set aside on ex parte application or on the court's own motion at any time.

n. Sound Recordings to be Offered as Evidence at Trial

- (1). Any party intending to offer a sound recording in evidence at a trial shall prepare a transcript of the sound recording at least two (2) weeks before trial and serve such transcript and a copy of the recording on all other parties. Any party disputing the accuracy of the transcript shall prepare his own transcripts of the sound recording identifying the disputed portions and serve that transcript on all other parties no later than three (3) days before trial. When disputed, the parties shall meet and confer in a good faith effort to resolve their differences.

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- (2). In the event that the differing versions cannot be resolved by the parties, they shall alert the Presiding Judge at the trial readiness hearing to reserve an appropriate amount of time in the assigned trial court to settle the dispute before summoning a jury panel.
- (3). Nothing herein is intended to contravene the applicable rules of discovery or valid claims of confidentiality provided by law. If a party is entitled to maintain the confidentiality of a sound recording and chooses to do so until trial, a proposed settled transcript shall be lodged with the court when the sound recording is marked for identification. The opposing party shall be allowed a reasonable opportunity to listen to the sound recording, prepare a proposed transcript and lodge objections before the sound recording is received as evidence.
- (4). Each transcript shall be certified by the person preparing it. In the event the sound recording is in a language other than English, the certification shall also include a certification by the person translating the sound recording.
- (5). The propounding party shall prepare a sufficient number of copies of the transcript for distribution as ordered by the court.
- (6). Any party intending to electronically present an exhibit at trial shall procure their own technical assistance for such a presentation. If the Court's technical assistance is to be requested, each party making such a request must comport with the Court's procedures, including but not limited to submitting the request on the Court's form at least 2 court days prior to the scheduled presentation date. Both the procedure and form are attached hereto in Appendix H. (Amended January 1, 2010).

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o. Requests to Conduct Media Coverage

Requests for media coverage (photographing, recording or broadcasting of court proceedings by the media using television, radio, photographic or recording equipment) in the courthouse or courtroom shall comply with the provisions of California Rules of Court, Rule ~~980~~1.150. The court will rule on the request at the hearing.

p. Dangerous, Large or Bulky Exhibits

(1). Permission from the judge assigned to the hearing or trial must be obtained before a party may bring dangerous, large or bulky exhibits into the courthouse. If possible, the party should substitute a photograph, technical report, or dummy object for proposed exhibits which are either:

(a). Inherently dangerous, such as:

- (1). Firearms;
- (2). Any type of explosive powder;
- (3). Explosive chemicals, toluene, ethane;
- (4). Explosive devices, such as grenades or pipe bombs;
- (5). Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;
- (6). Canisters containing tear gas, mace;
- (7). Rags which have been soaked with flammable liquids;

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(8). Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine;

(9). Samples of any bodily fluids, liquid or dried; or

(10). Controlled or toxic substances;

(11). Corrosive or radioactive substance.

Large and cumbersome, such as a ladder, sewer pipe, or automobile chassis.

(2). If a party believes the exhibit should be brought into the courtroom without substitution, an application for permission must be made in writing and describe the materials to be brought into the courtroom and the reason a substitution should not be made. The option of viewing the materials at another location may be considered by the court. (Refer to Rule 13 for required written statement).

(3). Evidence received in any case shall be limited to those items required in the case and shall be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence for a longer period of time.

(4). No exhibits shall be accepted by the Clerk or exhibits custodian unless:

(a). All containers of controlled substances are securely sealed and protected against breakage to safeguard court personnel, so that the contents cannot be spilled and odors cannot be emitted;

(b). All containers of liquid substances, including bodily fluids, are securely sealed and protected against breakage to safeguard court personnel, so personnel are not exposed to the contents and odors;

(c). All objects containing bodily fluids or dangerous, controlled or toxic substances (e.g., bloody shirt, gasoline soaked rag, etc.) are placed in

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containers that are securely sealed and protected against breakage so that odors cannot be emitted and court personnel are safeguarded;

(d). All Firearms are secured by a nylon tie or trigger guard, and have been examined by the bailiff to determine that they have been rendered inoperable;

(e). All sharp objects, such as hypodermic needles, knives, and glass, are placed in containers that are securely sealed and protected against breakage, which will safeguard personnel;

(f). All containers with liquid substances are clearly marked and identified as to type and amount;

(g). All containers of controlled substances are clearly marked, identified, weighed, and sealed;

(h). All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination.

(5). All exhibits must be individually tagged with the proper exhibit tag, properly completed, and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or identified will not be accepted by the court. Unless otherwise ordered, unidentified or improperly identified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.

(6). When a dangerous, large or bulky exhibit that has been marked and identified or received in evidence poses a security, storage or safety problem, on recommendation of the Clerk of the court, the court may order that all or a portion of it be returned to the party that offered it. In the case of exhibits offered by the prosecutor in a criminal case, the court may order that the exhibits be returned to the law enforcement agency involved. The order shall require that a full and complete photographic record of the exhibit or the portion returned be substituted for the exhibit. The party who offered

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the exhibit shall provide the photographic record. The party or agency to whom the exhibit is returned shall be responsible for maintaining and preserving the exhibit until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit shall remain in place and shall not be disturbed. Each exhibit shall be maintained intact and in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of the exhibit, the party or agency to whom it was returned shall promptly deliver the exhibit to the appropriate court, with notice to all parties.

q. Pass request

(1). The court has approved a form for use whenever an inmate requests a pass from the jail. The form is available at the Criminal Division of the clerk's office.

(2). If the pass is requested for medical reasons the inmate should complete a release of information form which is also available at the Criminal Division of the clerk's office.

(Effective July 1, 2004; Revised January 1, 2009; Amended January 1, 2010).

RULE 17: COURT EXECUTIVE OFFICER

Pursuant to Government Code § 69898, the Court Executive Officer, under the discretion of the Presiding Judge, shall exercise all of the powers, duties and responsibilities as Clerk of the Merced Superior Court. These powers, duties and responsibilities shall include all of those previously performed by the County Clerk as Ex Officio Clerk of the Merced County Superior Court, and those pertaining to the Grand Jury prescribed by Penal Code §§ 900 and 933. Pursuant to Government Code § 26800, the County Clerk is hereby relieved of any obligation imposed by law with respect to these powers, duties and responsibilities. Pursuant to Government Code § 69893 and Code of Civil Procedure § 195, the Court Executive Officer shall also serve as Jury Commissioner.